Supreme Court, U.S.
FILED
JUL 12 1993
OFFICE OF THE CLERK

No. 92-1934

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

J.M., INDIVIDUALLY,

Petitioner,

- against -

V.C., et al.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

RESPONDENT'S MOTION FOR SANCTIONS

FRANCES FARBER-WALTER
(Counsel of Record)
Stryker, Tams & Dill
Two Penn Plaza East
Newark, New Jersey 07105
(201) 491-9500

LENORA LAPIDUS
SIMON HELLER
The Center for Reproductive Law and Policy
120 Wall Street, 18th Floor
New York, New York 10005
(212) 514-5534

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

INTRODUCTORY STATEMENT 1

PROCEDURAL AND FACTUAL BACKGROUND 2

SUMMARY OF ARGUMENT 6

ARGUMENT 6

I. THE PETITION FOR A WRIT OF CERTIORARI FAILS TO MEET THE CRITERIA OF SUPREME COURT RULE 10.1 (b) AND IS FRIVOLOUS . 6

II. SANCTIONS ARE APPROPRIATE PURSUANT TO SUPREME COURT RULE 42.2 AND 28 U.S.C. § 1927 BECAUSE THE PETITION FOR CERTIORARI IS FRIVOLOUS 8

CONCLUSION 13

TABLE OF AUTHORITIES

Cases: ***Page:***

Crumpacker v. Indiana Supreme Court Disciplinary Comm'n, 470 U.S. 1074 (1985) 9

Hagerty v. Keller, Executor of the Succession of Clement, et al., 474 U.S. 968 (1985) 10

Mississippi Central R. Co. v. Smith, 299 U.S. 518 (1936) . . 10

Planned Parenthood v. Casey, 112 S.Ct. 2791 (1992) . . . passim

Roe v. Kansas, 278 U.S. 191 (1929) 11

Roe v. Wade 410 U.S. 113 (1973) 7,8

Slaker v. O'Connor, 278 U.S. 188 (1929) 10

Southern Railway Co. v. Gadd, 233 U.S. 572 (1913) 9,10

Talamini v. Allstate Insurance Co., 470 U.S. 1067 (1985) . . . 9

Wagner Co. v. Lyndon, 262 U.S. 226 (1923) 10

Supreme Court Rules:

Sup. Ct. Rule 10.1 (b) 6

Sup. Ct. Rule 42. . . . . passim

Statutes:

28 U.S.C. § 1927 1,6,8-9

INTRODUCTORY STATEMENT

Respondent, V.C., hereby moves for sanctions pursuant to Supreme Court Rule 42.2 and 28 U.S.C. § 1927. Respondent seeks just damages and single or double costs in the amount of $600 (or $1,200)[1] as compensation for printing costs incurred in responding to petitioner's frivolous petition for a writ of certiorari and motions of *amici curiae* in support of the petition.

The petition filed herein is the third petition for a writ of certiorari petitioner, J.M., has filed in this action. Last year, on June 22, 1992, petitioner filed two nearly identical petitions, one allegedly on behalf of himself and one allegedly on behalf of the fetus. In the present, third petition, J.M. again raises these same claims. Although this petition is allegedly filed on behalf of J.M., individually, petitioner nevertheless presents all the same arguments pertaining to the fetus' right to life that he previously raised in the petition on behalf of the fetus. The present petition, like the prior two, is frivolous and should be denied. In addition, sanctions should be imposed to compensate respondent for her costs and to deter J.M. from filing yet another frivolous petition or other application at some time in the future.

---

[1]Printing costs for Respondent's Brief in Opposition to the Petition for a Writ of Certiorari amounted to approximately $400; printing costs for Respondent's Opposition to Motions for Leave to File *Amici Curiae* briefs totalled approximately $200. Therefore, an award of single costs should total $600; an award of double costs should total $1200. Respondent does not seek reimbursement for attorneys' fees incurred in responding to petitioner's applications.

PROCEDURAL AND FACTUAL BACKGROUND

According to the complaint, petitioner and respondent were involved in a non-marital relationship which began in 1991, and in January 1992, respondent became pregnant. Upon learning that respondent had decided to have an abortion, on March 9, 1992, petitioner brought this action seeking an injunction preventing respondent from terminating her pregnancy. Moving *ex parte* and without prior notice to respondent, petitioner applied for a temporary restraining order ("TRO") to prevent respondent from having an abortion. The Superior Court of New Jersey, Chancery Division, entered a TRO enjoining respondent from terminating her pregnancy and from leaving New Jersey to obtain an abortion. The TRO provided no exception for respondent should the forced continuation of her pregnancy pose a threat to her life or health.

Respondent moved to dissolve the TRO and dismiss the complaint for failure to state a claim upon which relief could be granted. On March 19, 1992, the Chancery Division dismissed petitioner's claim as an individual for lack of standing. The Court declined to dismiss petitioner's claim brought on behalf of the fetus, however, and appointed petitioner as "guardian *ad litem*" for the fetus and continued the TRO against respondent.

On March 20, 1992, respondent moved on an emergent basis for leave to appeal to the New Jersey Appellate Division, seeking to lift the TRO and dismiss the remainder of petitioner's complaint brought on behalf of the fetus. On March 23, 1992, petitioner moved for leave to cross-appeal the dismissal of his complaint

brought as an individual. The Appellate Division granted respondent's motion for leave to appeal the order continuing the TRO, and summarily reversed and vacated the restraints. However, the Court stayed the dissolution of the TRO until 4:00 p.m. on March 24, 1992, to give petitioner a chance to bring an application for emergent relief to the New Jersey Supreme Court. The Appellate Division denied the parties all other relief.

Both parties sought leave to appeal to the New Jersey Supreme Court. Respondent requested immediate dissolution of the temporary restraints and dismissal of petitioner's entire complaint. Petitioner requested a continuance of the stay, reversal of the dismissal of his complaint brought as an individual, and a remand of the entire matter to the Chancery Division for a trial on both claims. On March 24, 1992, the New Jersey Supreme Court ruled unanimously to grant all of respondent's requested relief and deny all relief sought by petitioner.

Continuing his crusade, on March 25, 1992, petitioner applied for a stay of the New Jersey Supreme Court's decision to Justice David H. Souter and Justice Clarence Thomas of the United States Supreme Court. Both applications were denied. On March 31, 1992, petitioner moved for reconsideration in the New Jersey Supreme Court of the dismissal of his complaint brought as "guardian *ad litem*" for the fetus. The New Jersey Supreme Court denied that motion on April 6, 1992. Also on March 31, 1992, petitioner moved for reconsideration in the Superior Court of that Court's March 19, 1992 order dismissing the complaint brought on behalf of petitioner

individually. The Superior Court denied the motion on May 12, 1992. On May 18, 1992, petitioner filed a notice of appeal to the Appellate Division from the Chancery Division's order dismissing his claim as an individual.

On June 22, 1992, petitioner filed two separate but nearly identical petitions for writ of certiorari with this Court. Petitioner sought this Court's review of his claim as an individual -- the same claim raised herein -- even though that claim was still pending on appeal in the Appellate Division. In this Court, petitioner argued that the New Jersey Supreme Court's decision in this case was final as to both his claim as "guardian *ad litem*" for the fetus, and his claim as an individual. However, in state court, petitioner maintained that the New Jersey Supreme Court never reviewed his individual claim at all. This Court denied both petitions on October 5, 1992.

Respondent, V.C., filed a Motion for Summary Affirmance of the trial court's dismissal of petitioner's claim as an individual in the Appellate Division on July 31, 1992. On September 21, 1992 the Appellate Division granted respondent's motion, affirmed the trial court's dismissal, and dismissed petitioner's appeal.

On November 4, 1992, petitioner filed a Notice of Appeal to the New Jersey Supreme Court. Respondent filed a Motion for Summary Affirmance or for Dismissal of the Appeal on December 21, 1992. On March 11, 1993 the New Jersey Supreme Court dismissed the appeal, holding that the appeal failed to raise any substantial constitutional question and was governed by this Court's decision

in *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992).

Petitioner has raised the same claims presented herein through every level of the New Jersey court system, and has been denied relief at each stage. Only the Superior Court of New Jersey, Chancery Division, initially ruled in petitioner's favor when it improperly granted a temporary restraining order prohibiting respondent from obtaining an abortion in the state of New Jersey or leaving the state for this purpose, and appointed petitioner "guardian *ad litem*" for the fetus.[2] This decision was overruled by the New Jersey Supreme Court fifteen days later.

Despite the fact that the New Jersey Supreme Court lifted the restraints improperly imposed on V.C. over a year ago, petitioner has continued to press these same claims at every possible opportunity, forcing V.C. to respond time and time again. Once the New Jersey Supreme Court ruled that petitioner had failed to demonstrate any likelihood of success on the merits, it is inconceivable that petitioner could have believed, in good faith, that his repetitive filings would be successful. Rather, it is clear that these numerous filings were intended to harass respondent, waste the resources of her counsel and the courts, and gain publicity. Our Nation's courts serve the crucial function of deciding important legal questions facing individuals in our society. Usurping the valuable and finite time and resources of

---

[2]Notably, even the Chancery Division (the only court sympathetic to petitioner's claims) dismissed the claim petitioner brought as an individual -- the same claim now presented to this Court -- for lack of standing.

the courts for a mere publicity stunt or to advance a personal agenda is an outrage which ought not to be tolerated by this Court.

SUMMARY OF ARGUMENT

Respondent submits this motion for sanctions pursuant to Supreme Court Rule 42.2 and 28 U.S.C. § 1927. Sanctions are appropriate because the petition for a writ of certiorari herein is utterly frivolous and filed in bad faith. The petition fails to present any of the grounds for granting a petition set forth in Supreme Court Rule 10.1; the petition seeks review of the New Jersey Supreme Court's dismissal of petitioner's appeal which dismissal was properly based on this Court's holding in *Casey*, 112 S. Ct. 2791; and petitioner's claims have twice been denied by this Court in rejecting prior petitions for writs of certiorari.

Because this third petition for a writ of certiorari again raises the same frivolous claims, wasting the time and resources of this Court and respondent, the Court should impose sanctions on petitioner as well as his counsel and thereby deter the filing of any further meritless petitions or other applications.

ARGUMENT

I. THE PETITION FOR A WRIT OF CERTIORARI FAILS TO MEET THE CRITERIA OF SUPREME COURT RULE 10.1 (b) AND IS FRIVOLOUS.

The petition fails to establish any of the factors that weigh in favor of review on a writ of certiorari: this Court's prior decisions are dispositive, the New Jersey Supreme Court properly applied those decisions, and no conflict exists among the state or federal appellate courts as to the proper disposition of this case. *See* Sup. Ct. R. 10.1. As every appellate court has recognized, and

as this Court reaffirmed in *Casey*, 112 S. Ct. 2791, *Roe v. Wade*, 410 U.S. 113 (1973) and its progeny clearly protect the right of every woman, including respondent, to choose to terminate her pregnancy prior to viability.

In dismissing petitioner's appeal below, the New Jersey Supreme Court held:

> [Petitioner's] assertion that the matter presents a substantial constitutional question concerning whether a developing human embryo should be regarded as a person from the moment of conception for purposes of constitutional protection under the Fourteenth Amendment . . . is governed by current law, *Planned Parenthood v. Casey*.

Order, N.J. Sup. Ct., Mar. 11, 1993, App. Vol. I, at A-221,222.[3] The New Jersey Supreme Court relied specifically on this Court's decision in *Casey*, and correctly applied that holding as controlling precedent in this case. With this petition, J.M. seeks no less than to overturn *Casey* and *Roe* with frivolous and irrelevant arguments about when life begins.

Just as this Court properly denied petitioner's two prior petitions for a writ of certiorari, the Court should deny this third, equally frivolous, petition. Pursuant to Supreme Court Rule 10.1 (b), the petition for writ of certiorari should be denied because the New Jersey Supreme Court has not "decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." *Id.* The petition raises questions concerning fetal personhood, alleged

---

[3]All citations to materials in the appendix refer to Petitioner's Appendices submitted with the Petition for Writ of Certiorari and are cited here as "App. Vol. ___ at A-___."

constitutional rights of a fetus, and alleged rights of a "father" of a fetus to prevent a woman from obtaining an abortion.

In *Roe*, this Court held, "[t]he unborn have never been recognized in the law as persons in the whole sense," and "the word 'person' as used in the Fourteenth Amendment, does not include the unborn." *Id.*, 410 U.S. at 162, 158. In *Casey*, this Court reaffirmed "the essential holding of *Roe*." *Casey*, 112 S.Ct. at 2804. Justice Stevens, reiterated:

> Thus, as a matter of federal constitutional law, a developing organism that is not yet a "person" does not have what is sometimes described as a "right to life." This has been, and by the Court's holding today, remains a fundamental premise of our constitutional law governing reproductive autonomy.

Id. at 2839 (Stevens, J., concurring in part and dissenting in part). Thus, this Court's holding in *Roe*, that the fetus is not entitled to legal status as a "person" or to constitutional protection, remains the law of the land and petitioner's assertions otherwise are utterly frivolous.

II. SANCTIONS ARE APPROPRIATE PURSUANT TO SUPREME COURT RULE 42.2 AND 28 U.S.C. § 1927 BECAUSE THE PETITION FOR CERTIORARI IS FRIVOLOUS.

Petitioner's actions evidence a blatant disregard for the limited resources of the legal system, and this court should impose sanctions on petitioner, as well as his counsel, for once again filing a frivolous, unmeritorious claim. Supreme Court Rule 42.2 provides in relevant part, "When a petition for a writ of certiorari . . . is frivolous, the Court may award the respondent . . . just damages and single or double costs." *Id.* Further, 28 U.S.C. § 1927 provides, "[a]ny attorney . . . who so multiplies the

proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." *Id.*

Members of this Court have advocated sanctions for frivolous appeals or petitions for writ of certiorari. *See, e.g., Talamini v. Allstate Insurance Co.*, 470 U.S. 1067, 1071 (1985) (denying certiorari) (Stevens, J., concurring) ("if it appears that unmeritorious litigation has been prolonged merely for the purposes of delay, with no legitimate prospect of success, an award of double costs and damages occasioned by the delay may be appropriate."); *id.* at 1073 (opinion of Burger, J., C.J.) ("Judicious use of the sanction of Rule 49.2[4] in egregious cases . . . should discourage many of the patently meritless applications that are filed here each year"); *Crumpacker v. Indiana Supreme Court Disciplinary Comm'n*, 470 U.S. 1074 (1985) (opinion of Burger, C.J.); *Southern Railway Co. v. Gadd*, 233 U.S. 572, 581 (1914).

Rule 42.2 serves as both a punitive measure for the petitioner and as a means of compensation for the respondent. An "effort to invoke the Court's jurisdiction on an utterly frivolous claim should subject the attorney who filed the jurisdictional statement to the sanction of [Rule 42.2] of this Court." *Crumpacker*, 470 U.S. at 1074. Where a petition for a writ of certiorari "is so unsubstantial as to be frivolous, a penalty may

---

[4]The text of Supreme Court Rule 42.2 was previously contained in Rule 49.2.

be imposed." *Slaker v. O'Connor*, 278 U.S. 188, 190 (1929) (dismissing appeal and assessing damages). In *Slaker*, this Court ordered damages because, "without any authority of law, the appellant obtained an appeal. Thereby . . . he needlessly consumed [the Court's] time and imposed serious delay upon the appellees and otherwise burdened them." *Id.* at 191. *See also Mississippi Central R. Co. v. Smith*, 299 U.S. 518 (1936) (assessing damages against appellant whose appeal was dismissed for want of jurisdiction; treating the appeal papers as a writ of certiorari, the Court also denied certiorari); *Wagner Co. v. Lyndon*, 262 U.S. 226, 233 (1923) (dismissing appeal for lack of jurisdiction "because the grounds of appeal are frivolous" and imposing sanctions).

Where, as here, a party petitions for certiorari despite the fact that the claim has been carefully considered by the courts below, this Court should impose sanctions. *See Hagerty v. Keller, Executor of the Succession of Clement, et al.*, 474 U.S. 968 (1985) (denying certiorari) (Opinion of Burger, C.J.) ("[t]he time has come -- indeed it is long past -- when the Court should enforce Rule [42.2] or strike it." *See also Southern Railway Co.*, 233 U.S. 572. As in *Hagerty*, where Chief Justice Burger found, "[i]t is evident . . . that petitioner and his counsel have filed in this Court a completely frivolous petition as the most recent in a series of patently unfounded suits," 474 U.S. at 970 (Opinion of Burger, C.J.), petitioner here has raised these same claims at every level of the state court system; indeed, while petitioner in

Hagerty filed only one meritless petition, the petition herein is J.M.'s third frivolous attempt to obtain review by this Court.

When, as here, the controlling law is clear and undisputed, a petition for writ of certiorari questioning that law is frivolous. *See Roe v. Kansas*, 278 U.S. 191 (1929) (dismissing writ of error). In *Kansas*, the plaintiff challenged a statute which empowered the State to take by eminent domain land possessing historical interest, claiming that the statute violated the Due Process Clause of the Fourteenth Amendment. Because the statute's meaning was clear and the Court had no basis to doubt the power of the State to enforce it, the Court required the plaintiff to pay a penalty and costs to the defendant holding, "[t]he alleged ground for the present writ is without substance, and the circumstances justify the imposition of a penalty upon the party at fault." *Id.* at 193.

The petition herein flouts clearly established precedent. Because the New Jersey Supreme Court in dismissing petitioner's appeal, relied specifically on *Casey*, 112 S. Ct. 2791, this petition contests binding and dispositive precedent in the most frivolous and disrespectful manner. Like the two prior petitions in this case, the outcome of this petition is evident based on well-established precedent. Petitioner and his counsel should be sanctioned for pursuing such a frivolous claim which has clearly been filed in bad faith, without any prospect of prevailing. Petitioner's ongoing filings constitute a flagrant misuse of the judicial system, as well as blatant disrespect for the judgment of this Court. Such conduct is well deserving of sanctions, if only

to prevent J.M. from petitioning yet again for certiorari or from filing other applications for reconsideration in this case.

Although this Court rarely utilizes its power to impose sanctions, it should do so here because petitioner's conduct clearly falls within the scope of the Rule; indeed, the purpose of the Rule is to discourage precisely the type of frivolous litigation pursued by petitioner herein from crowding the Court's already overburdened docket. The petition currently before the court is the third filed by petitioner; the prior two petitions were denied by this Court on October 5, 1992. The present petition raises essentially the same issues as were raised in the petitions denied last year. Neither the facts nor the law on which the claims are based have changed in the intervening time. Therefore, the arguments contained in the present petition have already been found insufficient to merit granting a petition for writ certiorari and raising them again serves no purpose other than unnecessary delay and waste of respondent's and the Court's resources.

Advancing this meritless claim a third time has resulted in unnecessary added financial burden, causing respondent to file another Brief in Opposition to Petition for Writ of Certiorari, a Brief in Opposition to Motions for Leave to File Amicus Briefs, and the present Motion for Sanctions. Because petitioner's frivolous filings have necessitated a duplication of the efforts of both this Court and respondent's counsel, petitioner should be sanctioned and respondent should be compensated for her costs.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that this Court order sanctions, pursuant to Supreme Court Rule 42.2 and 28 U.S.C. § 1927, of single or double costs in the amount of $600 (or $1,200) and just damages as the Court deems proper.

DATED: July 7, 1993

Frances Farber-Walter
(counsel of record)
Stryker, Tams & Dill
Two Penn Plaza East
Newark, New Jersey 07105
(201) 491-9500

Lenora Lapidus
Simon Heller
Center for Reproductive
Law & Policy
120 Wall Street
New York, NY 10005
(212) 514-5534

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of July, 1993, deposited a true and correct copy of RESPONDENT'S MOTION FOR SANCTIONS in the United States post office in New York, New York, with first-class postage prepaid, addressed to:

Harold J. Cassidy, Esq.
Cassidy, Foss & Can Filippo
225 Broad Street
Red Bank, NJ 07701

Lenora Lapidus
LENORA LAPIDUS

Sworn to before me this 7th day
of July, 1993.

Eric C. Gantman
Notary Public, State of New York
No. 31-4965633
Qualified in New York County
Commission Expires 4/23/94